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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief primarily asserting that the director placed too much reliance on the small number of citations of the petitioner's work and failed to consider the reference letters. For the reasons discussed below, including an in-depth discussion of the reference letters, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Biochemistry and Molecular Biology from George Washington University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, alcoholism research, and that the proposed benefits of her work, improved therapeutic treatment of alcoholics and prevention of alcoholism, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

On appeal, counsel characterizes this final inquiry as whether the petitioner has demonstrated "a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business." This standard, however, is the standard for aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2). By statute, aliens of exceptional ability are generally subject to the job offer/alien employment

certification requirement; they are not exempt by virtue of their exceptional ability. Section 203b)(2) of the Act. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See NYSDOT,* 22 I&N Dec. at 218, 221.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

At the outset, we note that the petitioner must establish her eligibility as of the date of filing, in this case June 22, 2006. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In this matter, that means that he must demonstrate her track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that her as of yet unpublished or recently published research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Thus, we will only consider evidence relevant to the petitioner's eligibility as of that date.

As of the date of filing, the petitioner had published two full-length articles and had presented her work at six conferences or seminars, three of which took place at George Washington University where she was working. The petitioner was also acknowledged in an article by another researcher at George Washington University, recognition that is less than full authorship credit. In response to the director's request for additional evidence, the petitioner's supervisor, [redacted] asserted that the

petitioner has been cited several times by leaders in the field in the past two years. In support of this assertion, the petitioner submitted a review article that cited her 2005 article as one of 140 articles reporting advances in 2005. We acknowledge that the review article, which designates articles of "special interest" and "outstanding interest" designates the petitioner's article as one of 23 articles having "special interest." The petitioner also submitted results from www.scopus.com reflecting that the petitioner's 2005 article had been cited five times. The petitioner's 2006 article published months before the petition was filed had been cited a single time. In addition, the results reflect that articles published after the date of filing had also been minimally cited (between one and three times). The citations, with the exception of the review article discussed above and an article by [redacted] et al., postdate the filing of the petition. The article by [redacted] cites the petitioner's article as one of 10 articles for the proposition that chronic alcohol consumption and prenatal alcohol exposure alter the glycosylation process in hepatocytes and astroglial cells. The director concluded that this citation record is not indicative of a degree of influence in the field. On appeal, counsel does not contest this conclusion, but asserts that the director failed to consider the remaining evidence, including the letters of support. We will consider that evidence below.

The petitioner is a member of the American Society for Biochemistry and Molecular Biology (ASBMB) and the Research Society on Alcoholism. Professional memberships are one category of evidence that can be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). As stated above, even if the petitioner were eligible for classification as an alien of exceptional ability, that classification normally requires an approved alien employment certification. Section 203(b)(2) of the Act. Thus, we cannot conclude that evidence relating to eligibility for that classification warrants a waiver of the alien employment certification process in the national interest. *NYSDOT,* 22 I&N Dec. at 218, 221. Thus, we must examine whether the memberships are indicative of an influence in the field.

The record does not contain the membership criteria for the Research Society on Alcoholism and, thus, cannot establish that the petitioner's membership in this society is indicative of her alleged influence in the field. A letter from [redacted] indicates that the society is open to those who hold a Master's degree or Ph.D., have at least one published article and are sponsored by a regular member. None of these requirements suggest that this membership is notable. A degree alone is not evidence of exceptional ability. Section 203(b)(2)(C) of the Act. A degree alone is certainly not evidence of a track record of success with some degree of influence in the field. In fact, [redacted] asserts that the petitioner's position is one usually reserved for those with a doctorate, revealing that the petitioner's education does not set her apart from others qualified for her position. One published article may demonstrate some exposure of the petitioner's work, but is not, by itself, evidence of its influence in the field. As discussed above, the record does not demonstrate that the petitioner's publication record is indicative of a degree of influence in the field. Mere sponsorship by a regular member, who could be a close colleague, is not indicative of a track record of success with some degree of influence in the field as a whole. As none of the membership requirements set the petitioner apart from other research scientists, the petitioner's membership in ASBMB does not suggest that a waiver of the alien employment certification process is warranted in the national interest.

The record reflects that the petitioner received an ASBMB 2006 Graduate/Postdoctoral Travel Fellowship to facilitate her participation in a symposium for graduate students and postdoctoral trainees. The record does not establish that this symposium, limited to those still in school or training, is indicative of the petitioner's influence in the field.

The petitioner also claims to have judged the work of others. She submitted a letter from [redacted] listing the petitioner's internal review responsibilities at George Washington University. [redacted] does not explain how these internal responsibilities reflect on the petitioner's influence beyond George Washington University.

Finally, initially and in response to the director's request for additional evidence, the petitioner submitted several reference letters. [redacted] a professor at George Washington University and Chief of the Lipid Research laboratory at the Veterans Affairs Medical Center in Washington, D.C., discusses the petitioner's work in his laboratory. [redacted] asserts that the petitioner "completed an elegant study on the role of reactive oxygen species in the ethanol-mediated regulation of 2, 6-sialytransferase (2, 6-ST) in human liver cells." This work is the subject of the petitioner's 2005 article that has been cited as being "of special interest" in the review article. While this designation may reflect a conclusion as to the work's potential, it does not demonstrate the work's actual influence in the field. [redacted] further asserts that, based on this work, he promoted her to a "research scientist," a position normally restricted to those holding a Ph.D. Nothing in *NYSDOT,* 22 I&N Dec. at 215, suggests that an alien's ability to work in a position that normally requires more education that the alien possesses warrants a waiver of the alien employment certification process in the national interest. The petitioner must still demonstrate a track record of success with a degree of influence on the field.

[redacted] then discusses the petitioner's more recent work. Specifically, [redacted] explains that the petitioner "recently characterized a specific binding protein that interacts with the 3'UTR region of 2, 6-ST gene." [redacted] acknowledges, however, that this work had only been submitted for publication as of the date of filing. [redacted] next explains that the petitioner "has demonstrated for the first time how chronic ethanol-induced generation of asialogangliosides is due to up-regulation of the specific ganglioside sialidase gene in the brain." Once again, while [redacted] notes that this work had been accepted for publication, it had not yet been disseminated in the field and, thus, could not have influenced the field as of the date of filing this petition. Moreover, [redacted] merely speculates that this work "may be very important in behavioral abnormalities in alcoholics" and "may lead to more effective genetic therapeutic approaches in the treatment of alcoholics."

Further, [redacted] discusses the petitioner's work with alcohol biomarkers. Specifically, [redacted] explains that the petitioner "developed a novel method of purifying a low abundant plasma glycoprotein called apolipoprotein J (Apo-J) to homogeneity and quantifying its sialic acid content." [redacted] further explains that Apo-J has turned out to be "a unique marker for 'Alcohol Abuse.'" [redacted] asserts that the significance of this research is the acceptance for presentation at an upcoming conference in September 2006. [redacted] concludes from this acceptance that the petitioner "has made a seminal contribution to clinical medicine that may have far-reaching importance

in the prevention and treatment of alcoholism." This conference, however, had yet to occur as of the date of filing this petition. Moreover, we will not presume the influence of an individual presentation from the conference where it was presented. It is the petitioner's burden to demonstrate the influence of the individual presentation. The record contains no examples of independent laboratories utilizing the petitioner's purification method.

Finally, [redacted] broadly asserts that the petitioner "has received widespread acclaim from other experts in the field, who recognize her extraordinary abilities and contributions to the scientific community." [redacted] provides no examples that might support this assertion, such as identifying specific laboratories or clinics that are applying the petitioner's work.

The other references provide similar unsupported broad assertions. For example, [redacted] a professor at the University of Missouri and a "personal friend and colleague" of [redacted] asserts that the petitioner's 2005 article "has had widespread recognition in the scientific circles." Once again, [redacted] provides no examples to support this broad assertion.

[redacted] of the Southern California Research Center for Alcoholic Liver and Pancreatic Diseases, focuses mainly on the petitioner's presentation and publication record. As discussed above, however, merely publishing original work is insufficient without evidence of how that work has influenced the field. *See NYSDOT,* 22 I&N Dec. at 221, n.7. [redacted] states:

> The major importance of [the petitioner's] research is that it has led to our understanding as to how alcohol downregulates a key glycosylating gene that controls the sialytransferase. This gene seems to be specifically affected by ethanol and therefore, may explain the action alcohol in causing liver and brain injury. More importantly, it may lead to the identification of new biomarkers for alcohol abuse.

Finally, [redacted] concludes that the petitioner has advanced our knowledge in discovering a specific gene that is vulnerable to alcohol abuse, found a new and viable diagnostic marker for alcohol abuse and showed how moderate ethanol is cardioprotective. These speculative and conclusory assertions are not supported by examples of independent research teams or clinics utilizing the petitioner's work to develop treatments, test for alcohol abuse or identify new biomarkers. Dr. [redacted] does not purport to be applying the petitioner's research in his own laboratory. Finally, while [redacted] asserts that the petitioner's presentation was well received in Australia, that presentation postdates the filing of the petition and will not be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

Similarly, [redacted] a professor at the Alcohol Research and Treatment Center at the James J. Peters Veterans Affairs Medical Center in the Bronx, provides the following speculation:

> The significance of [the petitioner's] research is that it may help to lead to an understanding as to how alcohol affects key enzymes involved in glycoprotein

> metabolism, the sialytransferases. This is important because such interactions help explain how alcohol alters liver and brain metabolisms, and of key significance, understanding these interactions may identify biomarkers for alcohol abuse. The possibility that sialic acid deficient lipoproteins may serve as biomarkers for alcohol abuse, as has been postulated for carbohydrate-deficient transferring, would be a tremendous advance in identification of individuals who abuse alcohol to excess and who may be especially sensitive of the actions of alcohol.

Once again, [redacted] provides no examples of independent laboratories influenced by the petitioner's work. He does not claim to be influenced by the petitioner himself. [redacted] concludes that "only a handful of individuals in the world are as well qualified and as promising" as the petitioner. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

Some of the assertions made by the initial references are contradicted by the record. For example, [redacted], a professor at the University of Nebraska Medical Center who professes knowledge of [redacted], concludes that the petitioner is productive based on "having published 5 peer-reviewed journal articles and two abstracts within the past one and one half years." Similarly, [redacted] states that the petitioner "has published 5 full length papers in high quality journals such as" *Metabolism* and *Neurochemistry*. [redacted], a professor at the Mount Sinai School of Medicine, asserts that in two years, the petitioner "published three full-length papers in high quality journals" including *Metabolism* and *Neurochemistry* in addition to having two papers pending publication. As of the date of these letters, however, the petitioner had published only two full-length articles.

The opinions of experts in the field are not without weight and have been considered above. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of recognition for contributions without providing specific examples of how those contributions have influenced the field. Merely

repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[1] The petitioner also failed to submit persuasive corroborating evidence, which could have bolstered the weight of the reference letters.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Master's thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the petitioner's research has influenced the field to any degree.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).